Government of
Saskatchewan

2005-2006
Annual Report

Saskatchewan
Justice

Law Reform
Commission of
Saskatchewan

106-07046/

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Letters of Transmittal

Her Honour the Honourable Dr. Lynda M. Haverstock
Lieutenant Governor of Saskatchewan

May it Please Your Honour:

I have the honour of submitting the Annual Report of the Law Reform Commission of Saskatchewan for the period April 1, 2005 to March 31, 2006.

Respectfully submitted,

Frank Quennell, Q.C.
Minister of Justice and Attorney General

The Honourable Frank Quennell, Q.C.
Minister of Justice and Attorney General

Dear Sir:

I have the honour of submitting the Annual Report of the Law Reform Commission of Saskatchewan for the period April 1, 2005 to March 31, 2006.

Respectfully submitted,

Merrilee Rasmussen, Q.C.
Chair

The Law Reform Commission of Saskatchewan was established by *An Act to Establish a Law Reform Commission,* proclaimed in force in November 1973, and began functioning in February 1974.

The Commissioners are:

Ms Merrilee Rasmussen, Q.C., Chair

Mr. Kenneth P. R. Hodges, Q.C.

Ms Michaela Keet

Mr. Alan McIntyre

Ms Susan Amrud, Q.C.

Ms Sarah Buhler

Ms Carole Lavallee

Ms Susan Bates

Mr. Justice R. D. Laing

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Objectives

The Law Reform Commission Act provides that:

"The Commission shall take and keep under review all the law of the province, including statute law, common law and judicial decisions, with a view to its systematic development and reform, including the codification, elimination of anomalies, repeal of obsolete and unnecessary enactments, reduction in the number of separate enactments and generally the simplification and modernization of the law."

Topics for the Commission's research program are brought before meetings of the Commission for consideration. These topics may originate from a recommendation of the Minister of Justice, from the Commission and its staff, from the judiciary, from the legal profession, from other professional organizations, or from the public generally.

Once the research study in a particular project is completed, the matter is placed before the Commission for discussion and consideration. The Commission may decide to issue background papers or tentative proposals for circulation to the public in order to obtain criticism and comment prior to the preparation of a final report. This may entail public meetings, hearings and workshops. The Commission's recommendations are embodied in its final report to the Minister of Justice.

The Commission works closely with the Department of Justice in formulating research projects and facilitating adoption of its proposals. The Commission has also made an ongoing contribution on behalf of the province to the national work of the Uniform Law Conference of Canada. Commissioners and the Director of Research have served as members of the Conference for many years.

The Commission is a member of the Federation of Law Reform Agencies of Canada.

The Commissioners and Staff

The Law Reform Commission Act provides that the Minister of Justice shall appoint a Chair and not less than two other members of the Commission. Ms Merrilee Rasmussen, Q.C., is Chair of the Commission.

The other Commissioners for 2005-06 are:

Kenneth P. R. Hodges, Q.C. (who was Chair from 1992-2000)

Professor Michaela Keet, of the College of Law, University of Saskatchewan

Mr. Alan McIntyre, a member of the Robertson Stromberg Pedersen LLP law firm, in Regina

Ms Susan Amrud, Q.C., of the Saskatchewan Department of Justice

Ms Sarah Buhler, a practising lawyer based in Saskatoon

In 2003, two lay commissioners were appointed to assist the Commission in its work by providing a non-legal perspective on the issues before it. The current lay Commissioners are:

Ms Carole Lavallee, of the Cowessess First Nation

Ms Susan Bates, of Saskatoon

Mr. Justice R. D. Laing, of the Saskatchewan Court of Queen's Bench, was also appointed as a Commissioner in 2003.

Previous members of the Commission are:

Professor Brian A. Grosman, Q.C. (Chair 1974-78)
Professor R. C. C. Cuming, Q.C. (Chair 1978-82)
Dr. D. A. Schmeiser, Q.C. (Chair 1982-87)
Mr. Dale Linn, Q.C. (Chair 1987-92)
Chief Justice E. D. Bayda (1974-76)
Mr. George J. D. Taylor, Q.C. (1974-82)
Madam Justice Marjorie A. Gerwing (1976-92)
Mr. Gordon J. Kuski, Q.C. (1982-92)
Madam Justice Gene Anne Smith (1992-98)
Ms Gailmarie Anderson (1992-2001)
Judge Dianne Morris (1992-2002)
Mr. Douglas Moen, Q.C. (2000-02)

Mr. Michael Finley is Director of Research.

Financial Information

The Law Reform Commission is financed by the Province of Saskatchewan and the Law Foundation of Saskatchewan, and receives annual matching grants of $60,000 from each.

Commissioners receive honoraria from the Law Reform Commission of Saskatchewan based on the Order-in-Council by which they are appointed. The Chair receives $235 per day when engaged in work of the Commission and Commissioners receive $155 per day. The Director of Research is employed on a contractual basis at the rate of $70,000 per annum. Effective October 1, 2004, the Commission determined that the Chair should be engaged for the purpose of providing professional services, as are required, in addition to her duties as Chair of the Commission, in order to enhance the Commission's ability to produce and disseminate its reports and to liaise with individuals and organizations that are interested in the work of law reform. The Chair is paid an annual stipend of $10,000 to provide these services.

Research Program and Activities

Inventory of Law Reform Issues

The Commission has compiled an inventory of law reform issues in Saskatchewan. The inventory process was designed to identify emerging trends in law and society, as well as more discrete topics for law reform. Consultation with interested groups, individuals, and organizations focused on identification of issues and challenges, grouped around eight major themes:

- Democracy
- Aboriginal Peoples
- Human Rights
- Families and Children
- Vulnerable Adults
- Communities and the Environment
- Administrative Law and Procedure
- Technical Legal Issues

The inventory serves as a basis for the future work of the Commission. The Commission is also hopeful that it will assist legislators, researchers, and others interested in law reform to identify emerging needs of the justice system in Saskatchewan.

Current Research Program

Aboriginal Peoples

The Law Reform Commission of Saskatchewan has an interest in exploring the issues of Aboriginal self-government because of the significant Aboriginal population in this province and the need to find positive ways in which the Aboriginal and non-Aboriginal communities of Saskatchewan can live together harmoniously. To this end, the Chair of the Commission, Merrilee Rasmussen, Q.C., prepared a paper that she presented to the Uniform Law Conference of Canada at its meeting in Yellowknife in 2002, called *The Role of the Uniform Law Conference in relation to Aboriginal Laws*. The purpose of the paper was to stimulate thinking about the issues of harmonization of Aboriginal and non-Aboriginal laws. The Chair is presenting a paper to the Conference in its August 2006 meeting that will look specifically at the role of the Conference in extending its Commercial Law Strategy to the Aboriginal jurisdictional context.

The Law Reform Commission of Saskatchewan also completed a joint project with the Law Commission of Canada in 2003 in relation to the issue of Aboriginal self-government in Canada. The project was a theoretical paper developed by John Whyte, Q.C., a senior fellow of the Saskatchewan Institute of Public Policy and former Deputy Minister of Justice for Saskatchewan.

The Commission continues to work with the Saskatchewan Institute for Public Policy to investigate issues relating to Aboriginal self-government in a broad social and political context. Ian Peach, Director of the Institute, and the Chair of the Commission, prepared a joint paper which was presented at a conference called "First Nations, First Thoughts" on May 5 and 6, 2005, at the Institute for Canadian Studies, University of Edinburgh. The conference organizers provided notice that the paper was accepted in early March 2005. The delay in receiving word of acceptance resulted from the fact that the conference organizers were inundated with responses to their call for papers – over 500 abstracts were submitted and about 75 were selected to be presented at the conference.

The paper provides an analysis of the innovative provisions of the Saskatchewan Treaty Governance negotiations between Canada, Saskatchewan and First Nations that made it possible to consider a plan for a province-wide self-government framework. The key provisions were those that created a context for recognition of First Nations' own constitutions and membership codes, and, most importantly, a relationship of laws regime that would recognize that First Nations laws could, in appropriate circumstances, displace federal and provincial laws.

Using this paper as a base, the Chair presented a further paper to the "Moving towards Justice" Conference hosted by the Saskatchewan Institute of Public Policy on March 1, 2 and 3, 2006, titled, *Honouring the Treaty Acknowledgement of First Nation Self-Government: Achieving Justice Through Self-Determination.*

Human Rights

The Vulnerable Worker: The Law Commission of Canada has prepared a report that reviews this issue in terms of the federal government's legislative authority. The Commission has determined that it could usefully add to this discussion by reviewing the issues from a provincial perspective once the Law Commission has reported.

Handbook of Privacy Law and Legislation in Saskatchewan: The Commission is working together with the Saskatchewan Information and Privacy Commissioner to develop a handbook of privacy law from a Saskatchewan perspective.

Vulnerable Adults

Powers of Attorney: At the initiative of the Law Reform Commission of Saskatchewan, representatives of law reform agencies in British Columbia, Alberta, Saskatchewan, and Manitoba have met to discuss joint projects. The first such joint project was initiated in 2003 in relation to enduring powers of attorney, and specifically facilitating recognition of the enduring power of attorney document, clarifying the duties of attorneys, and issues for persons interacting with attorneys. A joint consultation paper was approved by all western law reform agencies by March 31, 2004, and consultations in the four jurisdictions occurred during 2004-05. It is anticipated that the four jurisdictions will produce a final report in 2006.

Elder Law Topics: The British Columbia Law Institute (BCLI) has created an Institute for Elder Law Studies and has recently released several reports in relation to matters of concern affecting elderly members of our society. The Saskatchewan Commission has approved the preparation of project proposals in relation to the topics of loans and guarantees to family members and reverse mortgages. The work of the BCLI will be an extremely helpful foundation.

Communities and the Environment

Liability of Landowners to Recreational Users of Land: The preparation of a project proposal on this topic was authorized by the Commission in February 2005. It is anticipated that a consultation paper will be issued in the fall of 2006.

Administrative Law and Procedure

The Commission's Administrative Law project responds to a perceived need for clear and accessible legislative guidance for the wide range of decision-making by boards and tribunals operating under provincial law.

The first phase of the project focuses on the concept of a model procedural code to guide the work of administrative tribunals established under Saskatchewan legislation. A consultation paper, *A Model Code of Procedure for Administrative Tribunals,* was issued in May 2003, and can be found on the Commission's web site. The Commission has circulated the draft to interested individuals and organizations and has met with several groups and individuals as part of its consultation process. A final report has been approved and will be printed and released in 2006.

Handbook of Professional Disciplinary Procedure: Draft for consultation – The Handbook is the second phase of the Commission's administrative law project and considers procedure before disciplinary committees and tribunals of self-governing professions regulated by Saskatchewan legislation. The Handbook is intended to be a practical guide to the procedure of investigation and discipline committees of professional organizations that have been given authority to discipline their members by statute. It is designed primarily for use by professional organizations that have not developed elaborate procedural rules unique to their needs. The Handbook is intended to make compliance with legal rules of procedure designed to protect the rights of parties to discipline proceeding less difficult for committee members who are not legally trained. Several professional associations have indicated an interest in the Commission's work in this regard. The Handbook has also been approved by the Commission in principle and will be printed and released in the fall of 2006.

A third phase will look at appeals from administrative tribunals.

Technical Legal Issues

Wills and Estates: During the course of consultations with members of the Saskatchewan bar as part of the Commission's inventory of law reform issues, concerns about several matters involving the law of wills and administration of estates were identified. The Commission issued its *Consultation Paper: Revocation of Wills* in October 2004. Under the present law, a will is automatically revoked on marriage or divorce. These long-standing rules are intended to protect the interests of spouses and children of the makers of wills. However, it has been suggested that the changing social and legal context may sometimes defeat the purpose of the rules, and even make them a problem. This consultation paper discusses the issues. A final report is expected in the fall of 2006.

The Commission issued its *Discussion Paper on the Consolidation of Certain Rules and Statutory Provisions in the Administration of Estates Act* in February 2005. This paper is part of the Commission's ongoing review of the law of wills, trusts, and administration of estates. During the course of research on other topics, the Commission identified a number of statutory provisions that are virtually obsolete, or so obscure that their significance is now uncertain. This renders them even more obscure. The Commission has also identified certain related common law and equitable rules that should be clarified and modernized by revising and codifying them. A related project is looking at the Rules of Court relative to administration of estates, and the Commission is being guided by a committee of lawyers and judges with a particular interest in this area of the law.

Title Insurance: The Commission has embarked upon a joint project with the Manitoba Law Reform Commission on the issue of title insurance in a Torrens system of land title registration. A joint research paper has been prepared to form the basis of consultations in the two jurisdictions. Consultations occurred in 2005-06. The Commission anticipates a report in 2006.

Fraudulent Conveyances and Preferences: The Commission is working with the Uniform Law Conference of Canada and its Commercial Law Strategy on a project to revise the law on Fraudulent Conveyances and Preferences. At present, this area of the law is principally governed by the *Fraudulent Conveyances, 1570,* a part of the English law received in Saskatchewan when the Northwest Territories, and later the province, were created.

Projects Completed in 2005-06

Discussion Paper on the Consolidation of Certain Rules and Statutory Provisions in The Administration of Estates Act
This paper is part of the Commission's ongoing review of the law of wills, trusts, and administration of estates. During the course of research on other topics, we identified a number of statutory provisions that are virtually obsolete, or so obscure that their significance is now uncertain. This renders them even more obscure. The Commission has also identified certain related common law and equitable rules that should be clarified and modernized by revising and codifying them.

Background Paper: Federalism and the First Nations: Making Space for First Nations' Self-Determination in the Federal Inherent Right Policy
Prepared by Ian Peach (Saskatchewan Institute of Public Policy) and Merrilee Rasmussen (Law Reform Commission of Saskatchewan) for the "First Nations, First Thoughts" Conference, Institute for Canadian Studies, University of Edinburgh, May 5 and 6, 2005. This paper is part of the Commission's ongoing research on issues of Aboriginal self-government. The paper provides an analysis of the innovative provisions of the Saskatchewan Treaty Governance negotiations between Canada, Saskatchewan and First Nations that made it possible to consider a plan for a province-wide self-government framework.

Consultation Paper: Private Title Insurance
The Manitoba and Saskatchewan Law Reform Commissions have undertaken a joint project on title insurance. This consultation paper examines the increasing use being made of title insurance to protect vendors, purchasers, mortgagors, and financial institutions when real estate is sold or mortgaged. It sets out the issues that arise when private insurance is introduced into jurisdictions with the Torrens land title system, in which title is assured by registration.

Consultation Paper: Family Loans and Guarantees
This consultation paper investigates loans made by one family member to another, and guarantees of loans obtained from financial institutions by a family member of the borrower. Both are common, and are often ways in which a parent can help an adult child financially. Unfortunately, both can also lead to misunderstanding. Potential problems are greatest if the lender or guarantor is a vulnerable elderly person. In such cases, the financial transaction may amount to elder abuse.

Consultation Paper: Reverse Mortgages
Reverse mortgages and loans granted to senior citizens that are repayable only when the borrower sells or leaves the home that secures the loan, have become popular in recent years. A reverse mortgage can provide access to home equity for cash-poor seniors, but critics suggest that the true cost of these loans is high, and that borrowers forced to move for health or other reasons may find the reverse mortgage is a problem. This paper discusses benefits and problems, and reviews proposals for regulation of reverse mortgages.

A complete list of all of the Commission's reports can be found on the Commission's web site at **www.lawreformcommission.sk.ca**.

Management's Responsibility for the Financial Statements

Management is responsible for the integrity of the financial information reported by the Law Reform Commission of Saskatchewan. Fulfilling this responsibility requires the preparation and presentation of financial statements and other financial information, according to the recommendations of the Public Sector Accounting Board. These recommendations are consistently applied, with any exceptions specifically described in the financial statements.

The accounting systems used by the Commission include an appropriate system of internal controls to provide reasonable assurance that:

- transactions are authorized;
- the Commission's assets are properly kept and financial reports are properly monitored to ensure reliable information is provided for preparation of financial statements and other information; and
- the accounts are properly kept and financial reports are properly monitored to ensure reliable information is provided for preparation of financial statements and other financial information.

To ensure management meets its responsibilities for financial reporting and internal control, the members of the Law Reform Commission of Saskatchewan discuss audit and reporting matters with representatives of management at regular meetings. The members of the Commission have also reviewed the financial statements with representatives of management.

The Provincial Auditor of Saskatchewan has audited the Law Reform Commission of Saskatchewan's statement of financial position as at March 31, 2006, and the related statements of operations and changes in net assets and cash flows for the year then ended. The Provincial Auditor's responsibility is to express an opinion on the fairness of management's financial statements. The Auditor's Report outlines the scope of the audit and the Provincial Auditor's opinion.

Merrilee Rasmussen, Q.C.
Chair
Regina, Saskatchewan
June 2006

Financial Statements

The financial statements on the following pages provide an account of the financial activities of the Law Reform Commission of Saskatchewan for the year ended March 31, 2006.

LAW REFORM COMMISSION OF SASKATCHEWAN

FINANCIAL STATEMENTS

For the Year Ended March 31, 2006

Provincial Auditor Saskatchewan

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1920 Broad Street
Regina, Saskatchewan
S4P 3V2

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SASKATCHEWAN

AUDITOR'S REPORT

To the Members of the Legislative Assembly of Saskatchewan

I have audited the statement of financial position of the Law Reform Commission of Saskatchewan as at March 31, 2006, and the statements of changes in net assets, operations, and cash flows for the year then ended. The Commission's management is responsible for preparing these financial statements for Treasury Board's approval. My responsibility is to express an opinion on these financial statements based on my audit.

I conducted my audit in accordance with Canadian generally accepted auditing standards. Those standards require that I plan and perform an audit to obtain reasonable assurance whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation.

In my opinion, these financial statements present fairly, in all material respects, the financial position of the Commission as at March 31, 2006 and the results of its operations and its cash flows for the year then ended in accordance with Canadian generally accepted accounting principles.

Regina, Saskatchewan
July 6, 2006

Fred Wendel, CMA, CA
Provincial Auditor

LAW REFORM COMMISSION OF SASKATCHEWAN
STATEMENT OF FINANCIAL POSITION
As at March 31

	2006	2005
ASSETS		
Current		
Cash (Statement 4)	$ 8,595	$ 108,460
Short-term investments (Note 3)	100,000	---
Accounts receivable	15,805	15,000
Prepaid expense	2,719	1,594
	127,119	125,054
Capital assets (Note 4)	---	516
Total Assets	$ 127,119	$ 125,570
LIABILITIES AND NET ASSETS		
Current Liabilities		
Accounts payable	$ 5,072	$ 7,456
Net Assets		
Net assets invested in capital assets	---	516
Unrestricted net assets	122,047	117,598
Total Net Assets (Statement 2)	122,047	118,114
Total Liabilities and Net Assets	$ 127,119	$ 125,570

(See accompanying notes to the financial statements)

LAW REFORM COMMISSION OF SASKATCHEWAN
STATEMENT OF CHANGES IN NET ASSETS
Year Ended March 31

	2006			2005
	Invested in Capital Assets	Unrestricted	Total	Total
Balance, beginning of year	$ 516	$ 117,598	$ 118,114	$ 91,603
Excess (deficiency) of revenue over expenses (Statement 3)	(516)	4,449	3,933	26,511
Balance, end of year	$ ---	$ 122,047	$ 122,047	$ 118,114

(See accompanying notes to the financial statements)

LAW REFORM COMMISSION OF SASKATCHEWAN
STATEMENT OF OPERATIONS
Year Ended March 31

	Budget	2006	2005
Revenues			
Saskatchewan Department of Justice grant	$ 60,000	$ 60,000	$ 60,000
Law Foundation grant (Note 6)	60,000	60,000	60,000
Interest	---	827	40
	120,000	120,827	120,040
Expenses			
Salaries and employee benefits	76,000	75,066	73,090
Commissioners' honoraria	10,300	11,640	5,540
Professional services	10,000	10,000	5,000
Conference and travel expense	11,230	13,888	5,283
Office supplies and services	13,800	2,700	2,672
Professional fees	2,700	2,214	1,016
Amortization	---	516	516
Miscellaneous	---	870	412
	124,030	116,894	93,529
Excess/(deficiency) of revenues over expenses	$ (4,030)	$ 3,933	$ 26,511

(See accompanying notes to the financial statements)

LAW REFORM COMMISSION OF SASKATCHEWAN
STATEMENT OF CASH FLOWS
Year Ended March 31

	2006	2005 (Note 8)
Cash flows from operating activities		
Saskatchewan Department of Justice grant	$ 60,000	$ 60,000
Law Foundation grant	60,000	60,000
Interest received	22	40
Cash paid to suppliers and employees	(119,887)	(90,611)
Cash provided by operating activities	135	29,429
Cash flows from investing activities		
Purchase of short-term investments	(100,000)	---
Cash used in investing activities	(100,000)	---
(Decrease) increase in cash	(99,865)	29,429
Cash, beginning of year	108,460	79,031
Cash, end of year	$ 8,595	$ 108,460

(See accompanying notes to the financial statements)

LAW REFORM COMMISSION OF SASKATCHEWAN
NOTES TO THE FINANCIAL STATEMENTS
March 31, 2006

1. Incorporation

The Law Reform Commission Act was amended effective November 6, 1987. At that date the Commission became a body corporate and continued the operations of the Law Reform Commission of Saskatchewan.

The purpose of the Commission is to review all the laws of the Province with a view to its systematic development and reform and generally the simplification and modernization of the law.

2. Significant Accounting Policies

These financial statements have been prepared in accordance with Canadian generally accepted accounting principles and include the following significant accounting policies:

a) Revenue Recognition
The Commission follows the deferral method of accounting and recognizes unrestricted contributions as revenue when received or receivable.

b) Capital Assets
Capital assets are recorded at cost. The capital assets are reduced annually for the consumed cost of the asset calculated upon the straight-line method. Capital assets include computers, which have a useful life of three years.

3. Short-term Investments

Short-term investments include term deposits with a maturity greater than 90 days, but less than one year. At year end, the short-term investments have an effective interest rate of 1.3%. Short-term investments are recorded at cost which approximates fair value.

4. Capital Assets

	Cost	Accumulated Amortization	Net Book Value 2006	Net Book Value 2005
Computer	$ 3,964	$ 3,964	$ —	$ 516

5. Related Party Transactions

Included in these financial statements are transactions with various Saskatchewan Crown corporations, departments, agencies, boards and commissions related to the Law Reform Commission of Saskatchewan by virtue of common control or significant influence by the Government of Saskatchewan.

The Law Reform Commission purchased office supplies and services from Rasmussen Management Consulting Ltd., which is owned by the chairperson of the Commission, and Olive Waller Zinkhan & Waller, the legal firm where the chairperson of the Commission was a partner during the year.

The Law Reform Commission contracted the chairperson of the Commission to provide professional services, in addition to her duties as chairperson, for the period October 1, 2004 to September 30, 2006 for $10,000 per annum.

The following table summarizes the Commission's related party transactions that are in the normal course of operations. These transactions are recorded at the standard rates charged by these parties and are settled at normal trade terms.

	2006	2005
Operating revenues - Grant from Department of Justice	$ 60,000	$ 60,000
Operating expenses		
Rasmussen, Merrilee, Q.C. - professional services	10,000	5,000
Olive Waller Zinkan & Waller - office supplies and services	1,829	---
Rasmussen Management Consulting Ltd. - office supplies and services	935	1,835
University of Saskatchewan - miscellaneous	130	289
Queen's Printer - printing	88	---

In addition, the Commission pays Provincial Sales Tax to the Saskatchewan Department of Finance on all its taxable purchases. Taxes paid are recorded as a part of the cost of those purchases.

6. Law Foundation Grant

The Law Reform Commission received a grant in 2005/06 from the Law Foundation of Saskatchewan for $60,000 (2004/05 – $60,000).

7. Financial Instruments

Financial instruments consist of short-term investments, accounts receivable and accounts payable. There are no significant terms and conditions related to the financial instruments that may affect the amount, timing and certainty of future cash flows. The fair value of these instruments approximates carrying value due to their immediate or short-term maturity.

8. Comparative Figures

Certain of the 2005 financial statement balances have been reclassified to conform with presentation of the 2006 figures.